

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 134

April 26, 1995, 6:22 p.m.  
Page S-5716 Temp. Record

## PRODUCT LIABILITY/Attorney Fees Disclosure

**SUBJECT:** Product Liability Fairness Act . . . H.R. 956. Gorton motion to table the Hollings amendment No. 598 to the Abraham modified amendment No. 597 to the Gorton substitute amendment No. 596.

### ACTION: MOTION TO TABLE AGREED TO, 94-3

**SYNOPSIS:** As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages and would limit such damages, and would encourage the adoption of alternative dispute resolution mechanisms.

The Abraham modified amendment would require an attorney, at the initial meeting upon being retained by a party in a Federal civil or diversity action, to inform that party of his or her right to have a written estimate within 30 days of all expected attorney's fees that might result from handling the case. Additionally, no later than 30 days after the date on which a claim or action was finally settled or adjudicated, an attorney would be required to provide a client a written statement containing: the actual number of hours the attorney provided services in connection with the claim; the total amount of the fee for the services provided; and the actual fee per hour charged (the total of hourly, contingent, flat, and other fees divided by the number of hours in which services were provided). The client, in writing, could waive or extend these rights. A client who did not waive these rights and to whom an attorney did not provide the required information could withhold 10 percent of the fee and file a civil action for resulting damages.

**The Hollings perfecting amendment** to the Abraham amendment would add that an attorney bringing a civil action or defending against a civil action could not receive more than \$50 an hour for legal services rendered.

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Hollings amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

(See other side)

YEAS (94)				NAYS (3)		NOT VOTING (3)	
Republican (52 or 100%)		Democrats (42 or 93%)		Republicans (0 or 0%)	Democrats (3 or 7%)	Republicans (2)	Democrats (1)
Abraham	Inhofe	Akaka	Kennedy		Daschle	Bond- <sup>2</sup>	Exon- <sup>2</sup>
Ashcroft	Jeffords	Baucus	Kerrey		Hollings	Hatfield- <sup>2</sup>	
Bennett	Kassebaum	Biden	Kerry		Inouye		
Brown	Kempthorne	Bingaman	Kohl				
Burns	Kyl	Boxer	Lautenberg				
Campbell	Lott	Bradley	Leahy				
Chafee	Lugar	Breaux	Levin				
Coats	Mack	Bryan	Lieberman				
Cochran	McCain	Bumpers	Mikulski				
Cohen	McConnell	Byrd	Moseley-Braun				
Coverdell	Murkowski	Conrad	Moynihan				
Craig	Nickles	Dodd	Murray				
D'Amato	Packwood	Dorgan	Nunn				
DeWine	Pressler	Feingold	Pell				
Dole	Roth	Feinstein	Pryor				
Domenici	Santorum	Ford	Reid				
Faircloth	Shelby	Glenn	Robb				
Frist	Simpson	Graham	Rockefeller				
Gorton	Smith	Harkin	Sarbanes				
Gramm	Snowe	Heflin	Simon				
Grams	Specter	Johnston	Wellstone				
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Helms	Thurmond						
Hutchison	Warner						

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

Some Senators have told us that they support the Hollings amendment as a more direct means of limiting attorney fees, which they mistakenly believe is the purpose of the underlying Abraham amendment. However, the purpose of the Abraham amendment is to require attorneys to provide a written estimate of their fees upfront and to provide a statement showing the total fees charged when a case is finished. Similar consumer disclosure laws are standard for other professions, and are consistent with the recommended ethical standards of the American Bar Association and with the ethical standards of State bar associations. We support the Abraham amendment, and do not accept the explanation that the Hollings amendment better serves its intent. Accordingly, we urge our colleagues to support the motion to table.

**Those opposing** the motion to table contended:

In our many years of law practice we have yet to hear any client complain that the legal fees they have been charged have been confusing. The contention has been made that moderate- and low-income people who do not commonly deal with lawyers are ill-equipped to judge the fairness of proposed billing methods by their lawyers. However, in most cases these individuals are simply represented on a contingency fee basis. Under the Abraham amendment, lawyers would have to start keeping elaborate track of any actions they take on behalf of their clients in order to be able to report how their contingency fees translate into dollar-per-hour earnings. The obvious intent of this requirement is to expose lawyers who actually do very little hourly work to earn their contingency fees. We know of no such lawyers ourselves who work on civil cases. However, we do know of thousands of lawyers who are employed by corporations who are paid several hundred dollars per hour. Accordingly, we have proposed the Hollings amendment, which would limit the hourly fees any lawyer can charge to \$50 per hour. This amendment, without any additional paperwork, would thus cut attorney fees. The Hollings amendment is meritorious, and should not be tabled.